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2013 AUG -5 PM 2:03

FF-698-M

In the Matter of the Impasse Between	)	
CITY OF BELL GARDENS	)	
Employer	)	**FACTFINDING REPORT AND RECOMMENDED TERMS OF SETTLEMENT**
- and-	)	**PERB CASE NO. LA-IM-133-M**
BELL GARDENS POLICE OFFICERS ASSOCIATION (BGPOA)	)	**REPORT ISSUED August 1, 2013**
Exclusive Representative	)	

Hearing Held on July 10, 2013

COMPOSITION OF THE FACTFINDING PANEL:

Impartial Chairperson: Daniel R. Saling Esq.
Arbitrator/Factfinder
33192 Ocean Hill Drive
Dana Point, CA 92629

City Member: Richard Kreisler Esq.
Liebert Cassidy Whitmore
6033 W. Century Blvd., Suite 500
Los Angeles, CA 90045

Union Member: Christopher Gonzales Esq.
Three Park Plaza, Suite 1400
Irvine, CA 92614

MAKING PRESENTATIONS TO THE FACTFINDING PANEL:

For the City:

T. Oliver Yee Esq.
Liebert Cassidy Whitmore
6033 Century Blvd., Suite 500
Los Angeles, CA 90045

For the Union:

Scott Burkle
COP/Labor Representative
COPS Legal, LLC
9668 Milliken, Suite 104-148
Rancho Cucamonga, CA 91730

Also Present for the City:

Will Kaholokula, Director of Finance
John Oropez, Assistant City Manager
Alex Souto, Human Resources Manager
Fred Weiner, Temporary Human Resources

Also Present for the Union:

Victoria Valdez, BGPAO Representative
Rigo Barrios, BGPOA President

BACKGROUND AND PROCEDURAL HISTORY

The City of Bell Gardens (City) is a general law city, incorporated in 1961. It is located in the southeast portion of Los Angeles County (County). The Agency is a relatively small geographic area and covers a land area of 2.4 square miles and has a population of 44,054.

The City employs approximately 148 employees, 77 of which are employed by the City's Police Department. There are currently five bargaining groups, one of which is the Bell Gardens Police Officers Association (BGPOA). As of May 2013, there were 42 members in the bargaining unit represented by the BGPOA.

The City's general fund revenues for the fiscal year (FY) 2011-2012 were $22,483,823 and expenditures were $23,257,006 leaving a deficit of $773,183. The City's general fund revenues for FY 2012-2013 were projected to be $23,513,875 and expenditures were projected to be

for FY 2012-2013 were projected to be $23,513,875 and expenditures were projected to be $22,360,860, leaving a surplus of $1,153,015. The City's budget general fund revenues for FY 2013-2014 are projected to be $23,539,410 and expenditures are projected to be $24,631,704, leaving a projected deficit of $1,092,294.

The impasse and factfinding proceeding at issue arose from the negotiations between the City and the Union on a successor agreement to the unilaterally adopted Terms and Conditions of the Employment document.

BARGAINING HISTORY

The City and Union were parties to a Collective Bargaining Agreement, the ("Agreement") that expired in 2011. The parties were unable to agree to a successor agreement and on September 29, 2011, the City unilaterally implemented terms and conditions of employment for the BGPOA for the 2011-2012 fiscal year.

The City and the Union engaged in the meet and confer process for a successor Agreement in May of 2012. The parties exchanged several proposals between May 2012 and April 2013. On May 30, 2013, the Union sent a letter to the City and declared impasse. In the Union's letter of impasse, the Union requested that mandatory fact finding under the Meyer-Milias Brown Act be conducted.

The unilaterally adopted Terms and Conditions of Employment document contained thirty-one (31) articles. After a number of bargaining sessions, the bargaining parties determined that they were at impasse on eight (8) articles.

During the impasse proceedings the parties reached tentative settlement on the following articles:

Article 3	Retirement Contributions
Article 9	Special Events/Call Outs
Article 15	Field Training Officer

On June 6, 2013, Daniel R. Saling was chosen and appointed by PERB to serve as the neutral chairperson of the factfinding panel. The City and Union designated Richard Kreisler and Scott Burkle to serve as their respective members of the panel. The City and the Union waived statutory time limits for the holding of a hearing and for the issuance of the panel's report.

The panel is statutorily authorized to meet with representatives of the parties through investigation and/or hearing and, if an agreement settling all issues cannot be reached, to make a

factual finding based on the evidence presented as well as to recommend terms of settlement. To initiate those quasi-legislative responsibilities, a hearing was held on July 10, 2013, in Bell Gardens, California, during which time the City and Union were given full opportunity to present evidence on the outstanding issues. Following the presentations of the bargaining parties, an effort was made to attempt to resolve the impasse through mediation. The panel members met with their respective groups and then met together with the neutral chairperson to attempt to resolve the impasse. Following an effort to mediate, it was determined that while the parties had made concessions and moved from their impasse positions, there would not be a negotiated settlement reached as of July 10, 2013. The factfinding panel in their executive session discussed the parties' presentations and the process they would use to reach a consensus with regard to the issuance of a factfinding report. During the executive session, the City's panel members stated that the draft recommendation of the neutral would be brought to the attention of the City Council on July 22, 2013.

At the conclusion of the executive discussions of the panel, the chairperson indicated that he would prepare a draft of the factfinding report and recommendation. A copy of the proposed factfinding report was emailed and/or faxed to the partisan members of the panel for their comments and/or suggestions. The partisan members of the panel were made aware of their right to either concur or dissent on all or part of the majority opinion. The chairperson prepared the final copy of this report and recommendations which were provided to the partisan panel members for their official signature.

RELEVANT FACTORS

Government Code Subsection 3548.2 (b) states as follows:

In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all of the following criteria:

(1) State and federal laws that are applicable to the employer.
(2) Stipulations of the parties.
(3) The interests and welfare of the public and the financial ability of the public employer.
(4) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.

(5) The consumer price index for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment and all other benefits received.

(7) Any other facts, not confined to those specified in paragraphs (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

Any criterion which has not been relied upon by the parties has not been considered in arriving at the findings and recommendations made herein.

The first duty of the panel is to address the City's claim that it does not have the ability to provide a salary increase to the members of the bargaining unit. When a City asserts an inability to pay, they have the burden of proving that they cannot afford to continue paying at the current level and/or that they cannot afford to negotiate increases in compensation.

Both the City and Union put forth arguments regarding the City's ability to pay. The City projects that its future financing will be substantially reduced and that it will have to make further reductions and expenditures of existing reserves. The Union pointed out that it had made concessions because of the financial crisis that the City faced but pointed out that the City has had sufficient income and reserves to provide members of the bargaining unit with a moderate salary increase and to provide some revenues for the cost of increased health coverage.

The City has projected small increases in revenues and continuing cost increases in expenditures. Further, the City admitted that it had reserves of ten (10%) percent. The City has not met its burden of proof and has not shown that it has the inability to pay a modest salary increase and to share in the increased cost of medical coverage. The Union has tentatively agreed to make concessions in a number of areas that will result in savings for the City.

ISSUES

In the declaration of impasse filed by the Union, the following represents the issues to be considered and addressed in this factfinding report:

The issues at impasse are as follows:

(1)	Article 2	Salary
(2)	Article 3	Retirement Contributions

(3)	Article 8	Vacation Accrual
(4)	Article 9	Special Events/Call Outs
(5)	Article 11	Health Insurance
(6)	Article 14	Retiree Health
(7)	Article 15	Field Training Officer
(8)	Article 24	Work Schedule

During the factfinding hearing, the parties reached tentative agreement on the following Articles and therefore they will not be addressed by the Factfinding Panel:

(1)	Article 3	Retirement Contributions
(2)	Article 9	Special Events/Call Outs
(3)	Article 15	Field Training Officer

Based on the stipulations of the parties, the only issues for consideration by the Factfinding Plan were the following:

(1)	Article 2	Salary
(2)	Article 8	Vacation Accrual
(3)	Article 11	Health Insurance
(4)	Article 14	Retiree Health
(5)	Article 24	Work Schedule

CITY'S GENERAL IMPASSE POSITION

It is the position of the City, that because of California's financial crisis and the decline in revenues, the City must reduce expenditures and that it cannot continue to deficit spend its reserves. The City believes that it has to either eliminate or reduce services by making cuts in expenditures that have the least effect upon the delivery of City services to the citizens of Bell Gardens. The City made significant cuts in most other categories of the City budget. However, there is now a need to look to the staff to find reductions that will help balance the budget.

The City indicated that it had experienced a significant downturn in revenues over the past several years and at the same time personnel costs and health costs have significantly increased. Additionally, the City expressed the opinion that the bargaining unit in its overall compensation is well compensated when compared to neighboring cities.

UNION'S GENERAL IMPASSE POSITION

The Union contends that the City has carried excessive amounts of money in reserves. The City has maintained a reserve of 10% for economic uncertainties. Further, the Union contends that the City has paid its City Manager and other administration well above other cities within the County and has denied benefits and economic increases to members of the bargaining unit.

The Union expressed concern with the City's budgeting practices over the years wherein the City underestimated its actual income and overestimated its actual expenditure, thereby increasing and/or maintaining its reserves each year. The Union and its membership realize that the City has faced some economic uncertainty but does not believe that the members of the bargaining unit should be denied moderate increases in compensation. The Union has indicated a willingness to meet the City partially and assume some of the cost for health coverage but the City must pay its share of the increased cost.

SUMMARY OF BARGAINING PARTIES' POSITIONS

The City wishes to secure a two year agreement with the Union (2012-2014). The City has proposed no increase in salary for the 2012-2014 fiscal years. The City would like to add a Section 6 to Article 3, Retirement Contributions, that would add Public Employees' Pension Reform Act of 2013 (PEPRA) language for new hires. The City proposed status quo for Article 8, Vacation Accrual. The City wished to change Article 9, Special Events/Call Outs, that would change overtime pay for officers whose regular assigned duties would begin after they had been called back to work. The City proposed the formation of a joint labor/management health insurance committee Article 11, Health Insurance. The City wished to change the bargaining unit members' work schedule under Article, 24, Work Schedule. This change would require an officer to work 86 hours prior to being paid overtime. Also, the City proposed the establishment of a work period for non-sworn and sworn BGPOA members, establishment of three possible work schedules for members, exclusion of paid leave from computation of hours worked, and limiting overtime compensation for non-sworn members to time worked beyond the work period only.

The Union expressed a desire to have a three year agreement with a zero salary increase for the first year and a 4% increase for each of the following two years. The Union did not have a proposal on Article 3, Retirement Contributions. The Union proposed that under Article 8, Vacation Accrual, the parties reinstate annual vacation and sick leave buy outs. Under Article 9, Special Events/Call Outs, there would not be any overlap of show up time and the officers' regular schedule shift. The Union in Article 11, Health Insurance, proposed that the City pay the CPI increase up to a 4% cap for payment of health benefit increases. The Union did not have a proposal on Article, 14, Retiree Health. The Union proposed in Article 24, Work Schedule, that members of the bargaining unit who work patrol would have a 12 hour shift and overtime

compensation would be calculated at a rate of 1.5 times their regular rate of pay or they would be given compensatory time off for any hours in excess of their regularly assigned duty hours.

FACTFINDING PANELS FINDINGS AND RECOMMENDATIONS

ARTICLE 2 – SALARY

UNION AND CITY POSITION

The City and the Union have proposed a two and three year term respectively. The City has proposed no salary increase for either FY 2012-2013 or FY 2013-2014. The Union has proposed a three year term and has proposed no salary increase for FY 2012-2013 but has proposed a four percent (4%) increase in FY 2013-2014 and FY 2014-2015.

ANALYSIS AND RECOMMENDATION

It is the panel's recommendation that the City and Union enter into a two year agreement, FY 2012-2013 and FY 2013-2014. The panel recommends no increase for the FY 2012-2013 and a two percent (2%) salary increase for the FY 2013-2014.

ARTICLE 8 – VACATION ACCRUAL

UNION AND CITY POSITION

The Union proposed that the annual vacation and sick leave cash out be reinstated. The City proposed status quo and indicated that because of its financial difficulties, it had eliminated the leave cash out options when it had unilaterally implemented the terms and conditions of employment on BGPOA unit members for FY 2011-2012.

ANALYSIS AND RECOMMENDATION

The cost of a cash out of accrued vacation and/or sick leave is dependent on the number of bargaining unit members that opt to request compensation instead of using the vacation days for vacation or using sick leave days when ill. The City pays for vacation time and when an officer is off because there is a need to cover that officer's assignment. In an officer's absence, additional officers have to be hired or other officers have to be paid overtime to fill in for the absent officer.

Either of these options results in cost to the City that may be higher than the cost for allowing the officer to cash out his/her accrued vacation and/or sick leave.

It is the Panel's recommendation that the language contained in Article 8, Vacation Accrual, prior to the City's unilateral adoption of the FY 2011-2012 be reinstated.

ARTICLE 11 – HEALTH INSURANCE

UNION AND CITY POSITION:

The City proposed no change to Article 11, Section 4 from the language contained in the unilaterally adopted 2011-2012 Agreement. The Union proposed that the City pay the annual increase in the cost of health insurance premiums equal to the CPI but not to exceed four percent (4%). Additionally, the Union proposed an opt-out payment equivalent to 50% of the cost of the monthly premiums for those employees who would decline coverage.

ANALYSIS AND RECOMMENDATION

The City contends that the members of the BGPOA bargaining unit are well compensated when total compensation is considered. The City believes that the BGPOA are compensated above average when compared to other neighboring cities. The City claims that the health benefits paid for its employees rank it first when compared to comparable cities. Additionally, the City points to its economic uncertainty and its desire to reduce costs, due to its lack of revenue increases, as a reason for not paying increases in health insurance costs.

The Union did not propose that the City pay all of the increased cost of health insurance and has indicated that its members are willing to pay their fair share of the increase. The Union has requested that the City pay the CPI increase up to a maximum of four percent (4%). Additionally, the Union proposed that bargaining unit members be allowed to opt out of the health insurance and receive compensation equal to 50% of the employer paid contributions.

The City has proposed under Article 11, Section 5, that the bargaining parties reconvene a joint labor/management health insurance committee to explore a cost savings alternative. The Union did not have a proposal on this subject. While the concept of a joint committee working together to achieve cost savings is commendable, this issue was not mutually agreed to at the bargaining table and was not tentatively agreed to during the factfinding hearing. Therefore one can only assume that there is a low level of trust that exists between the parties. To recommend the formation of a joint working committee when parties are unwilling to mutually agree to participate in such a committee would doom it to failure.

The Union's proposed opt out would allow bargaining unit members that are covered by another health insurance plan or who believe that do not need health care coverage to be paid 50% of the cost paid by the City. While this would reduce the cost to the City, it would reduce the number of contributors to the insurance pool and could have a substantial impact on future insurance increases based on utilization.

The panel recommends that the City pick up the additional cost of health insurance for the FY 2013-2014 based upon the CPI but not to exceed two percent (2%). The panel does not recommend that bargaining unit members be allowed to opt out of the health insurance and receive compensation. Further, the panel does not have a recommendation with regard to a joint labor/management health insurance committee that would be charged with exploring health care cost savings.

ARTICLE 14 – RETIREE HEALTH

UNION AND CITY POSITION:

The City proposed an addition of a new Section 6 to Article 14, Retiree Health. The City proposed a two tier system that would require new employees hired after July 1, 2012 to be subject to different retiree health requirements than those hired prior to that date. The Union did not have a proposal regarding Article 14, Retiree Health.

ANALYSIS AND RECOMMENDATION

New employees would have a tiered system and they would not be fully qualified for retiree health benefits until they have achieved a certain number of service years. The employee would qualify for 50% coverage after ten years of service and each year of service beyond the ten years would qualify them for higher levels of covered benefits. Employees would not qualify for 100% retiree coverage until they have twenty years of service.
The cost savings to the City will be considerable as new employees are hired but these savings will not be immediate. The City proposal does not take away a benefit for current employees and will affect only new employees. The new employees would not be denied retiree coverage but would have to be long term employees to gain full retiree coverage.

The panel recommends that the City's proposed new Section 6 to Article 14, Retiree Health be added to the new Agreement.

ARTICLE 24– WORK SCHEDULE

UNION AND CITY POSITION:

The City proposed new language in Article 24, Work that would define an officer's work week to be fourteen (14) days. There was no suggestion that the existing work schedule in terms of the number of days worked per week and hours per day be changed. In Section 4 of Article 24, the City proposed that under the Fair Labor and Standard Act (FSLA) sworn officers not be eligible for overtime pay until they have exceeded eight-six (86) hours in a 14-day work period. Further, the City proposed the establishment of a work period for non-sworn and sworn BGPOA members, establishment of three possible work schedules for members, exclusion of paid leave from computation of hours worked, and limiting overtime compensation for non-sworn members to time worked beyond the work period only.

The Union contends that the California Labor Code requirements regarding overtime pay would be violated if the FSLA standard was adopted. The Union agrees that the work week is 14 days but that overtime at 1.5 times the officer's normal rate of pay will be paid when the officer exceeds his regular defined work day.

The City has attempted to reduce the amount of overtime it pays to bargaining unit members to save money. There was no evidence provided that would indicate what level, if any, savings would be achieved if the FSLA standard was adopted. A change in the method of how overtime is paid could negatively impact the bargaining unit members' working conditions and their overall compensation.

It is the recommendation of the panel that the status quo language found in Article 24, Work Schedule, of the 2011-2012 agreement remain in full force and effect.

REMAINDER OF THE AGREEMENT

It is understood that the Preamble and all Articles will remain the same as the prior Agreement or as modified through the recent bargaining process for the 2012-2014 Agreement.

CONCLUSION

3548.3. Findings of fact and recommendation of terms of settlement; submission; costs:

(a) If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, in which recommendations shall be advisory only. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are made public. The public school employer shall make such findings and recommendations public within 10 days after their receipt.

This report regarding the legal and jurisdictional requirement of Government Code 3548 et. seq, as referenced above, has been met. This Factfinding proceeding was concluded as required by law within the thirty (30) day requirement of the law but the parties had agreed to a timeline that exceeded the thirty (30) day requirement.

Concur_____

Dissent X

Concur in part_____

Dissent in part_____

8-2-13

Richard Kreisler
City Panel Member

Concur X

Dissent_____

Concur in part_____

Dissent in part_____

Christopher Gonzalez
Union Panel Member

Daniel R. Saling
Panel Chairperson

Report Issued: August 1, 2013
Dana Point, California

Attached, City of Bell's Dissent

City of Bell Gardens and Bell Gardens Police Officers Association
Case No. LA-IM-133-M

City of Bell Gardens' Dissenting Opinion to the Factfinding Report and Recommended Terms of Settlement

City of Bell Gardens' Representative to Factfinding Panel
Richard M. Kreisler

As the City of Bell Gardens' representative to the Factfinding Panel, I respectfully dissent in significant part to the Factfinding Report and Recommended Terms of Settlement issued by panel Chairperson Daniel Saling. In regards to several of the issues before the panel, it appears that the report did not consider numerous factors set forth in Government Code section 3505.4 ("Section 3505.4") that must guide the findings and recommendations of the panel. For example, as discussed in greater detail below, the report did not consider the comparison of wages of other similarly situated employees in *comparable agencies*; the overall compensation presently received by employees, including benefits; the continuity and stability of employment at the City; or the interests and welfare of the public.

Accordingly, I dissent to the following findings and/or recommendations in the report.

I. ARTICLE 2 – SALARY

The panel recommends a two-percent (2%) salary increase for the FY 2013-2104.

I dissent to the panel's recommendation that the Bell Gardens Police Officers Association (BGPOA) members receive a two percent (2%) salary increase for FY 2013-2014. A 2% salary increase would result in an additional liability of $102,985.50 for FY 2013-2014.

The report states that the City "asserts an inability to pay" argument in regards to providing a salary increase to BGPOA members. This characterization of the City's position is inaccurate. The City did not contend that it "is unable to pay" as to salary increases. Rather, the City presented evidence to the panel demonstrating that the City's proposal of continuing the status quo in regards to compensation, *i.e.* no salary increase, helps achieve the City's important goals of reducing expenditures and achieving both short and long-term savings. These are goals related to responsible fiscal management that serve the interest and welfare of the public, which is a factor under Section 3505.4 that the panel must consider in arriving at its recommendations and findings. Yet, this factor was not considered in the report. Thus, the City's position is that it is "not wise or responsible" to provide a salary increase.

The City presented the panel with a plethora of evidence of various financial indicators which support the need for the City to reduce expenditure and achieve both short and long-term savings. There is perpetual uncertainty surrounding the City's primary revenue source, the Bicycle Casino, and increasing personnel and benefits related costs. In regards to the City's revenues, 42% of revenues are derived from the card club fees from the Bicycle Casino, located in the City. The City has seen a significant downturn in these revenues since the 2008 peak.

Moreover, personnel and benefits related costs such as health insurance and retirement benefits costs have significantly increased over the past several years and are projected to continue to increase. The City presented evidence to the panel indicating that POA health insurance costs have been steadily increasing since FY 2009-2010 ($684,952) and are projected to continue increasing to FY 2014-2015 ($872,804). Moreover, CalPERS has recently announced an increase in employer rates through FY 2019-2020 (46.364% for 2012; 50.3% for 2015), which will result in significant increases in retirement benefits costs. Finally, retiree health costs have been steadily increasing since FY 2009-2010 ($267,586) and are projected to continue increasing through FY 2013-2014 ($549,989).

The uncertainty and downturn in the City's revenues and increase in personnel related costs is reflected in the City's projected deficit for FY 2013-2014 and in its reserves. For FY 2013-2014, it is projected that the City will have a deficit of $1,092,294. With regards to the City's reserves, in recent years, the City has not been able to achieve its stated goal of a minimum of 10% in reserves. The City is still well below that goal. For FY 2013-2014, the City has allocated 8.53% in reserves.

On the other hand, the BGPOA did not provide any salient evidence to the panel to support a salary increase. For example, the BGPOA emphasized irrelevant and generic financial information such as total assets of the City, total government revenues, and the general fund balance of the City, information that does not accurately depict the financial health of the City because in part, it does not address *expenditures*. This financial information does not specifically relate to personnel costs or the City's goal of reducing expenditures and achieving both short and long-term savings.

In addition, Section 3505.4 mandates that the panel consider wages and benefits received by similarly situated employees employed by *comparable agencies*. The report failed to address this factor. An analysis of peer *total compensation* from actual comparable agencies indicates that a salary increase is unnecessary because the BGPOA members are well compensated. The City provided the panel with a comprehensive total compensation survey that accounted for the *total compensation* of the neighboring public safety agencies that are similar in size to the City. Those agencies are: Downey, Whittier, Los Angeles County (Sheriff's Department), Huntington Park, Bell, Alhambra, Monterey Park and Montebello. Bell Gardens police officers total compensation ranked second highest among the aforementioned agencies, 11.32% above the average total compensation. With regards to benefits, Bell Gardens police officers rank first among the aforementioned agencies, and are 88% above the average benefits of comparable agencies. (For example, the City's maximum monthly health insurance payment on behalf of officers is $2,543, Alhambra- $960, Monterey Park- $1,037, Montebello- $1,110, Whittier- $1,426, Huntington Park- $1,438, LA County Sheriff's- $1,523, Downey- $1,619, Bell- $1,682.)

The BGPOA also provided a salary survey for the panel's consideration. However, the BGPOA's salary survey does not accurately provide a comparison of comparable agency compensation. The BGPOA salary survey includes the cities of Commerce, Lynwood and Maywood. These cities all contract their police services with the County of Los Angeles. Hence, their salary figures are identical on the survey. But by listing these three cities

separately, the salary survey skews the results by adding three cities to the survey that should be considered as one entity, Los Angeles County Sheriff's Department. Indeed, in the City's total compensation survey, Los Angeles County Sheriff's Department is included in the survey as a single entity. In addition, the BGPOA's salary survey includes the City of Long Beach and the City of Los Angeles, cities that are hardly comparable to Bell Gardens. As of the 2010 census, Long Beach has a population of 462,257 and Los Angeles has a population of 3,792,601. The Long Beach Police Department has 742 police officers and the Los Angeles Police Department has 10,023 police officers. Finally, the BGPOA's salary survey does not provide information regarding the "overall compensation" ("total" compensation) presently received by its members or the employees of other agencies because it only includes starting base salary pay and top step pay. It does not include any benefits received by the employees.

Section 3505.4 also provides that the panel must consider continuity and stability in employment as a factor for its findings and recommendations. This factor was not addressed in the report. The City provided evidence to the panel that the City does not have difficulties retaining BGPOA members. Of the 41 members in the BGPOA, 76% have been with the City for more than five years, and 37% have been with the City for more than 10 years.

Finally, the parties informed the panel that no other City bargaining unit received a salary increase during their latest round of collective bargaining with the City. Thus, the recommended salary increase for BGPOA members will likely create the appearance of an inequitable environment at the City. Moreover, a salary increase will negatively affect future negotiations with these other bargaining units as those units may believe that they were unfairly treated simply by virtue of having reached an agreement with the City prior to the BGPOA.

Accordingly, I cannot recommend that the City provide a 2% salary increase to the BGPOA members for FY 2013-2014.

II. ARTICLE 8 – VACATION ACCRUAL

The panel recommends that the language contained in Article 8, Vacation Accrual, prior to the City's unilateral adoption of terms and conditions of employment for FY 2011-2012, which provides for annual vacation and sick leave cash out, be reinstated.

I dissent to the panel's recommendation that provides for annual vacation and sick leave cash out for BGPOA members. The panel reasons that "the cost of a cash out of accrued vacation and/or sick leave is dependent on the number of bargaining unit members that opt to request compensation instead of using the vacation days...." The panel then reasons that by not allowing an annual cash out of vacation and sick leave, the costs may be higher because additional officers "have to be hired or other officers have to be paid overtime to fill in for the absent officer."

Due to the financial challenges facing the City in recent years, the City eliminated the leave cash out option when it unilaterally implemented terms and conditions of employment on BGPOA members for FY 2011-2012. The City presented evidence to the panel indicating that reinstating annual vacation and sick leave cash out will create an immediate liability for the City

on an annual basis, in the amount of approximately $136,000. Given the current uncertainties surrounding the City's revenues and increasing personnel and benefits related costs (*see* Section I above), the City cannot reasonably support such a recommendation.

Accordingly, I cannot recommend that the City reinstate the annual vacation and sick leave cash out option for BGPOA members.

III. ARTICLE 11 – HEALTH INSURANCE

The panel recommends that the City pick up the additional cost of the maximum City-funded health insurance premium for the FY 2013-2014 based upon CPI but not to exceed two-percent (2%).

I dissent to the panel's recommendation that the City pick up the additional cost of the maximum City-funded health insurance premium for the FY 2013-2014 based upon CPI but not to exceed two-percent (2%). An increase of 2% would result in an additional annual liability of $19,915.73.

Given the current uncertainties surrounding the City's revenues and increasing personnel and benefits related costs (*see* Section I above), the City's proposal of maintaining the status quo (*i.e.* no increase) comports with the City's important goal of reducing expenditures and achieving both short and long-term savings. Moreover, the BGPOA did not provide any salient evidence to support an increase in benefits (*see* Section I above).

In addition, the report failed to address "overall compensation" received by employees, including benefits, and benefits received by similarly situated employees employed by comparable agencies. These are factors that must be considered under Section 3505.4. The evidence provided to the panel clearly demonstrates that an increase in benefits is unnecessary because BGPOA members receive significantly more in benefits than their peers at comparable agencies. Specifically, with regards to the maximum monthly health insurance premium contribution, the City ranks first among comparable agencies, and is $1,148 more than the average of the comparable agencies. (The City's maximum monthly premium payment is $2,484.11, Alhambra- $959.65, Monterey Park- $1,036.69, Montebello- $1,090, Huntington Park- $1,398.82, Whittier- $1,425.59, LA County Sheriff's- $1,522.92, Downey- $1,573.41, Bell- $1,681.86.)

Finally, as noted above, the City does not have difficulties retaining BGPOA members. Of the 41 members in the BGPOA, 76% have been with the City for more than five years, and 37% have been with the City for more than 10 years.

Accordingly, I cannot recommend that the City pick up the additional cost of the maximum City-funded health insurance premium for the FY 2013-2014 based upon CPI but not to exceed two-percent (2%).

IV. ARTICLE 24 – WORK SCHEDULE

The panel recommends that the status quo language regarding the work schedule and overtime, which provides for overtime for time worked beyond the work schedule, remain in full force and effect.

I dissent to the panel's recommendation that the status quo language regarding the work schedule and overtime, which provides for overtime for time worked beyond the work schedule, remain in full force and effect. The City proposed that, in accordance with the Fair Labor and Standards Act (FLSA), sworn BGPOA members with a 14 day work period are subject to section 7(k) of the FLSA for overtime calculations, *i.e.* overtime compensation is not required for sworn officers until the number of hours worked exceeds eighty-six (86) hours in the 14-day work period. For non-sworn members, the City proposed that they shall receive overtime compensation for time worked beyond the employee's Sunday to Saturday work period, but not based on the number of hours worked in any one day. In addition, in regards to work schedule, the City's proposal reserves the right of the City to assign to and schedule employees in accordance with requirements determined by the City, and change work schedules and assignments upon reasonable notice.

The panel reasons that the City did not provide evidence "that would indicate what level, if any, savings would be achieved if the FLSA standard was adopted." This statement is inaccurate. On the contrary, the City provided evidence to the panel that the City's proposal regarding overtime eligibility will result in approximately $52,000 in annual savings. Given the current uncertainties surrounding the City's revenues and increasing personnel and benefits related costs (*see* Section I above), such savings comport with the City's important goal of reducing expenditures and achieving both short and long-term savings.

In addition, the City's proposal on the work schedule corresponds to the needs of the Police Department as a 24/7 organization, which requires flexibility on the part of its employees in regards to schedules and assignments. This flexibility is necessary in order for the Department to efficiently and effectively function. The proposed language achieves this goal, while also providing employees with reasonable notice of a work shift change whenever reasonably possible. Under the City's proposal, whenever possible, BGPOA members would receive a two week notice of proposed work schedule changes.

Finally, there are currently six sworn positions in the Police Department which are frozen. Thus, the savings achieved from the City's proposal provides the City with future flexibility to address the frozen positions.

Accordingly, I cannot recommend that the status quo language regarding the work schedule and overtime, which provides for overtime for time worked beyond the work schedule (daily or weekly), remain in full force and effect.

In conclusion, based on all of the above, I hereby dissent in significant part to the panel Chairperson's Factfinding Report and Recommended Terms of Settlement.

Richard M. Kreisler, City of Bell Gardens' representative to the factfinding panel

Signature

7-26-13

Date